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DATE: December 14, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Cut-to-Length Carbon-Quality Steel Plate Products from
the Republic of Korea: Decision Memorandum for Preliminary
Results of Antidumping Duty Administrative Review; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) covering the period of review (POR) February 1, 2017, through January 31, 2018. The review covers two producers and/or exporters of the subject merchandise. We preliminarily determine that companies subject to this review made sales of the subject merchandise at prices below normal value (NV).

II. BACKGROUND

On February 10, 2000, we published in the *Federal Register* an antidumping duty order on CTL plate from Korea.¹ On February 1, 2018, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² On April 16, 2018, based on timely requests for administrative review, we initiated an administrative review of two

¹ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 4639 (February 1, 2018).



companies, Dongkuk Steel Mill Co., Ltd. (Dongkuk) and Hyundai Steel Company (Hyundai Steel).³

On October 3, 2018, we extended the due date for the preliminary results of this review from October 31, 2018, to December 14, 2018.⁴

We verified the responses of Dongkuk and Hyundai Steel in November 2018.⁵

III. SCOPE OF THE ORDER

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to length (not in coils) and without patterns in relief), of iron or non-alloy quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298, 16304 (April 16, 2018).

⁴ See Memorandum, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated October 3, 2018.

⁵ See Memoranda, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Home Market Sales Verification of Dongkuk Steel Mill Co., Ltd.,” dated concurrently with this Preliminary Decision Memorandum, and “Verification of the Questionnaire Sales Responses of Hyundai Steel Company,” dated concurrently with this Preliminary Decision Memorandum (Hyundai Steel Verification Report).

(formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise to unaffiliated U.S. customers were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁶

⁶ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1. See also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

In recent investigations and the last completed administrative review of this order, Commerce applied a “differential pricing” analysis for determining whether application of the A-A method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) and 19 CFR 351.414(c)(1).⁷ Commerce finds that the differential pricing analysis used in recent investigations and reviews may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a weighted-average dumping margin for each respondent.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of U.S. prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV to determine individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of

⁷ See, e.g., *Certain Tool Chests and Cabinets from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum at 21-24, unchanged in *Certain Tool Chests and Cabinets from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018), and *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018) (*2016-17 Prelim*), and accompanying Preliminary Decision Memorandum at 3-6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018) (*2016-17 Final*).

three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

For Dongkuk, based on the results of the differential pricing analysis, we preliminarily find that 58.46 percent of the value of U.S. sales pass the Cohen's *d* test⁸ and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Thus, for the preliminary results, we are applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Dongkuk.

For Hyundai Steel, based on the results of the differential pricing analysis, we preliminarily find that 62.10 percent of the value of U.S. sales pass the Cohen's *d* test⁹ and confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Hyundai Steel.

B. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by the respondents in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, we made comparisons to weighted-average comparison market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month.

C. Date of Sale

We normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice

⁸ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Dongkuk Steel Mill Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (Dongkuk Preliminary Analysis Memorandum).

⁹ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Hyundai Steel Company," dated concurrently with this Preliminary Decision Memorandum (Hyundai Steel Preliminary Analysis Memorandum).

date if we are satisfied that a different date better reflects the date on which the material terms of sale are established.¹⁰ Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹¹

For home market sales, Dongkuk explained that the sales quantity and price may change between the time of the initial order and the shipment of the merchandise.¹² For U.S. sales, Dongkuk explained that the essential terms of sale are fixed at the time of shipment¹³ and that the shipment date precedes the sales invoice date.¹⁴ Accordingly, for Dongkuk's sales in both the home and U.S. markets, we have defined the dates of sale as Dongkuk's reported shipment date.

For home market sales, Hyundai Steel explained that "quantity can change up until shipment from Hyundai Steel's factory, and price can change up until Hyundai Steel issues its tax invoice."¹⁵ Hyundai Steel further explained that "SHIPDAT1H represents the date of shipment as recorded in the company's sales system, which normally reflects the date on which the merchandise physically shipped from Hyundai Steel's factory to the delivery destination designated by the customer unless the customer requested that Hyundai Steel delay the actual shipment until a later date. SHIPDAT2H represents the actual (physical) date of shipment, where different from the date recorded in the sales system. Hyundai Steel only reported this field where the physical shipment occurred after the system shipment date. Because the tax invoices are issued on SHIPDAT1H, and sales are recorded at the end of the month in which the shipment is recorded in the system, the price term is fixed firmly in the month in which SHIPDAT1H occurs, meaning that price could not change between SHIPDAT1H and SHIPDAT2H."¹⁶ In response to a request for further information, Hyundai Steel also explained that it "is not aware of any instances in the past three years in which the material terms of sale changed between SHIPDAT1H and SHIPDAT2H for CTL plate or for non-subject merchandise."¹⁷ Based on these facts, for Hyundai Steel's home-market sales, we used the invoice date as the date of sale except in cases where the shipment date (SHIPDAT1H) precedes the invoice date, in which case we used the shipment date.

For U.S. sales, Hyundai Steel explained that "prices and quantities can be subject to change up to the time of shipment, and often do change between the purchase order date and shipment date."¹⁸ For Hyundai Steel's sales in the U.S. market, the date of shipment precedes or is the same as the date of invoice. Accordingly, we have defined the date of sale for Hyundai Steel's U.S. market sales as the reported shipment date.

¹⁰ See 19 CFR 351.401(i).

¹¹ See, e.g., *2016-17 Prelim* and accompanying Preliminary Decision Memorandum at 6-7; unchanged in *2016-17 Final*.

¹² See Dongkuk's Section B Response dated June 12, 2018, at 27.

¹³ See Dongkuk's Section C Response dated June 12, 2018, at 22.

¹⁴ See Dongkuk's Section A Response dated June 12, 2018, at 24.

¹⁵ See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from Korea – Section A Questionnaire Response," dated May 30, 2018 (Hyundai Steel AQR) at A-32.

¹⁶ See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from Korea – Supplemental Sections A-D Questionnaire Response," dated August 2, 2018 (Hyundai Steel SQR) at 7.

¹⁷ *Id.* at 8.

¹⁸ See Hyundai Steel AQR at A-32.

D. Level of Trade/CEP Offset

To the extent practicable, we determine NV based on sales of the foreign like product at the same level of trade (LOT) as CEP sales.¹⁹ Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²¹ In order to determine whether the home market sales were at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.* the chain of distribution), including selling functions, class of consumer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOT for EP or comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

When we are unable to match NV at the same LOT as the EP or CEP, we may compare U.S. sale prices to comparison market sale prices at a different LOT. When this occurs and the difference in LOT is demonstrated to affect price comparability based on a pattern of consistent price differences between sale prices at different LOTs in the NV market under consideration, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP only, if the NV is established at a LOT which constitutes a more advanced stage of distribution than the LOT of the CEP, and there is no basis for determining whether the difference in the LOT between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), then we grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

We examined the differences in selling functions reported in the respondents' responses to our requests for information. Dongkuk reported two types of customers in the home market: end-users and distributors.²² The selling activities associated with the two types of customers did not differ;²³ therefore, we consider the two reported channels of distribution to constitute one LOT. In the U.S. market, Dongkuk reported CEP sales to distributors.²⁴ Therefore, we considered the CEP to constitute only one LOT. We compared the selling activities at the CEP LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by the respondents' U.S. affiliates, that these levels were substantially dissimilar. Dongkuk's sales at the CEP level do not involve certain selling activities while sales at the home market level include those activities.²⁵ Therefore, for Dongkuk, we preliminarily determine the home-market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

¹⁹ See section 773(a)(1)(B)(i) of the Act and 19 CFR 351.412.

²⁰ See 19 CFR 351.412(c)(2).

²¹ *Id.*

²² See Dongkuk's Section B Response dated June 12, 2018, at 25.

²³ See Dongkuk's Section A Response dated June 12, 2018, at 18-19 and Exhibit A-18.

²⁴ See Dongkuk's Section C Response dated June 12, 2018, at 20.

²⁵ See Dongkuk's Section A Response dated June 12, 2018, at 21. ("As shown in Exhibit A-18, the activities

Hyundai Steel reported two types of customers in the home market: end-users and distributors.²⁶ The selling activities associated with the two types of customers did not differ; therefore, we consider the two reported channels of distribution to constitute one LOT. In the U.S. market, Hyundai Steel reported CEP sales and EP sales to traders.²⁷ After deducting selling functions corresponding to economic activities in the United States with respect to CEP sales, *i.e.*, those performed by Hyundai Steel's U.S. affiliates, we found that the selling functions Hyundai Steel performs with respect to EP sales and CEP sales do not differ. Accordingly, we find that Hyundai Steel's EP sales and CEP sales were made at the same LOT. We compared the selling activities at the U.S. LOT with the selling activities at the home market LOT and found, after deducting selling functions corresponding to economic activities in the United States, *i.e.*, those performed by Hyundai Steel's U.S. affiliates, that these levels were substantially dissimilar. Hyundai Steel's sales at the U.S. level involve no or lower levels of, *e.g.*, sales forecasting, strategic/economic planning, personnel training/exchange, engineering services, advertising, inventory maintenance, direct sales personnel, sales/marketing support, or market research, or technical assistance relative to sales at the home market level.²⁸ Therefore, for Hyundai Steel, we preliminarily determine the home-market sales to be at a different LOT and at a more advanced stage of distribution than the single U.S. LOT.

Because there is only one LOT in the home market, we were unable to calculate a LOT adjustment based on either of the respondents' home market sales of the foreign like product and we have no other information that provides an appropriate basis for determining a LOT adjustment. Moreover, because the U.S. LOT did not exist in the home market, there is no basis for calculating an adjustment for the LOT in the U.S. market. Accordingly, for the respondents' CEP sales, we made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act for both respondents. The CEP offset adjustment to NV is subject to the offset cap, which is calculated as the sum of home market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP. Because we were unable to calculate a LOT adjustment (*i.e.*, there is only one LOT in Hyundai Steel's home market), we made no LOT adjustment with respect to Hyundai Steel's EP sales.

E. Affiliated Service Providers

Section 773(f)(2) of the Act provides that “{a} transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as

performed by Dongkuk in connection with its home-market sales are greater in scope and intensity than the activities it performed in connection with U.S. sales.”). *See also* Dongkuk's Section A Response at Exhibit A-18 for business proprietary details of the level of selling activities.

²⁶ *See* Hyundai Steel AQR at A-19.

²⁷ *Id.*

²⁸ *See* Hyundai Steel SQR at Exhibit S-2.

to what the amount would have been if the transaction had occurred between persons who are not affiliated.”

Hyundai Steel obtained inland freight from factory to warehouse (INLFTWH), warehousing expenses (WARESH and DWAREHU), inland freight from factory/warehouse to customer (INLFTCH), domestic inland freight for U.S. sales (DINLFTWU and DINLFTPU), international freight (INTNFRU), inland insurance (INSUREH), other freight services, and material inputs into production from affiliated companies.²⁹ We revalued steel scrap expenses pursuant to section 773(f)(2) of the Act; Hyundai Steel reported an adjustment to effectuate this at our request.³⁰

F. Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, we calculated EP for certain of Hyundai Steel’s U.S. sales where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. In accordance with section 772(b) of the Act, for the remainder of Hyundai Steel’s U.S. sales and all of Dongkuk’s U.S. sales, we used CEP because the subject merchandise was sold in the United States by U.S. sellers affiliated with Hyundai Steel and Dongkuk, respectively, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

1. Dongkuk

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. Dongkuk classified all of its sales of subject merchandise to the United States as CEP sales because all such sales were invoiced and sold by Dongkuk’s U.S. affiliate, Dongkuk International, Inc.³¹ We calculated CEP based on the delivered prices to unaffiliated purchasers in the United States.³² We adjusted these prices for movement expenses, including international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling

²⁹ See letter from Hyundai Steel, “Certain Cut-to-Length Carbon-Quality Steel Plate from Korea – Sections B, C, and D Questionnaire Responses,” dated June 6, 2018 (Hyundai Steel BCDQR) at B-32 through B-36, C-30 through C-33, C-35, and Exhibit D-4.

³⁰ See SQR at 23-24.

³¹ See Dongkuk’s Section A Response dated June 12, 2018, at 7, 17, and Section C Response dated June 12, 2018, at 18.

³² Dongkuk did not incur or report packing expenses. See, e.g., Dongkuk’s Section B Response dated June 12, 2018, at 50-51, Section C Response dated June 12, 2018, at 52, and Supplemental Response dated August 8, 2018, at 12-13, and Exhibit SB-10.

expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit for economic activities in the United States to arrive at CEP.

2. Hyundai Steel

We based EP on the prices to the first unaffiliated purchaser in the United States.³³ We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties.

Hyundai Steel classified some of its sales of subject merchandise to the United States as CEP sales because all such sales were invoiced and sold by Hyundai Steel's U.S. affiliate, Hyundai Corporation USA.³⁴ We calculated CEP based on the delivered prices to unaffiliated purchasers in the United States. We adjusted these prices for movement expenses, including foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit for economic activities in the United States to arrive at CEP.

G. Normal Value

1. Overrun Sales

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

The respondents reported home market sales of "overrun" merchandise, *i.e.*, sales of products that failed to meet the original customer's order specifications because of differences in size, chemical components, and/or strength. In the past, we examined various factors to determine whether "overrun" sales are in the ordinary course of trade.³⁵ We have the discretion to choose how best to analyze the many factors involved in determining whether sales are made within the ordinary course of trade.³⁶ These factors include, but are not limited to, the following: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the

³³ Hyundai Steel did not incur or report packing expenses. See Hyundai Steel BCDQR at B-45 and C-50.

³⁴ See Hyundai Steel AQR at A-18.

³⁵ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1364-65 (CIT 2003); see also, *e.g.*, 2016-17 Prelim and accompanying Preliminary Decision Memorandum at 11, unchanged in 2016-17 Final.

³⁶ See *Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).

comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.³⁷

Based on our analysis of these factors and the terms of sale, we preliminarily determine that the respondents' overrun sales are outside the ordinary course of trade. Because our analysis includes business proprietary information, the analysis is available in separate decision memoranda.³⁸

2. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in Korea to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to their U.S. sales volume, in accordance with sections 773(a)(1)(B) and (C) of the Act. Because the volume of each of the respondents' home market sales of the foreign like product exceeded five percent of their aggregate U.S. sales volume of the subject merchandise, we preliminarily determine that each of the respondents' home markets are viable for comparison purposes.

3. Affiliated Parties

Dongkuk made home market sales to a subsidiary of Dongkuk Industries Co., Ltd. (DKI). DKI owns a certain percentage of DKI's subsidiary. Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang, are brothers. DKI's Chairperson, Sang Kuhn Chang, is an uncle of Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang. Sang Kuhn Chang is also the Chairman of Dongkuk S&C (DSC).

Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang, respectively own 13.83 percent and 9.33 percent of Dongkuk's shares and collectively own 23.16 percent of Dongkuk's shares.³⁹ DKI's Chairman, Sang Kuhn Chang, Vice Chairman, Sae Hee Chang, and Executive Vice President, He Won Chang, respectively own 7.04 percent, 26.91 percent, and 1.80 percent of DKI's shares and collectively own 35.75 percent of DKI's shares.⁴⁰ Together the Chang family grouping owns the largest number of shares of Dongkuk and DKI.⁴¹

³⁷ See 2016-17 Prelim and accompanying Preliminary Decision Memorandum at 11, unchanged in 2016-17 Final.

³⁸ See Memoranda, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Dongkuk's Home Market Overruns" and "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Hyundai Steel's Home Market Overruns," dated concurrently with this Preliminary Decision Memorandum.

³⁹ See Dongkuk's Section A Response dated June 12, 2018, at Exhibit A-11, and Dongkuk's Supplemental Response dated August 8, 2018, at 2, and Exhibit SA-9.

⁴⁰ See Dongkuk's Section A Response dated June 12, 2018, at Exhibit A-11 and Dongkuk's Supplemental Response dated August 8, 2018, at 2, and Exhibits SA-1 and SA-2.

⁴¹ See Memorandum, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Affiliation of Dongkuk Steel Mill Co., Ltd., and Certain Home Market Customers," (Dongkuk Affiliation Memo) dated concurrently with this Preliminary Decision Memorandum. See also Dongkuk's Section A Response dated June 12, 2018, at Exhibits A-10, A-11, A-13, and Attachment A-1, and Dongkuk's Supplemental Response dated

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). The definition of family includes uncle-nephew relationships under section 771(33)(A) of the Act.⁴² Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, Commerce will consider family groupings. In prior reviews of this order, we found that Dongkuk and DKI are affiliated.⁴³

Therefore, we preliminarily find that DKI's Chairperson, Sang Kuhn Chang, and Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang, are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) because of their uncle-nephew relationship. We also preliminarily find that Dongkuk, DKI, and DSC are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because Dongkuk, DKI, and DSC are under common control of the Chang family grouping.⁴⁴ Accordingly, we preliminarily treated Dongkuk's home market sales to DKI's subsidiary as sales to an affiliated party and performed the arm's-length test for these sales.

Dongkuk also made home market sales to a company owned by the sister and brother-in-law of Dongkuk's Chairman, Sae Joo Chang, and Vice Chairman, Sae Wook Chang. Together this Chang family grouping owns the largest number of shares of Dongkuk and this company.⁴⁵

Members of a family are affiliates pursuant to section 771(33)(A) of the Act and 19 CFR 351.102(b)(3). Although section 771(33)(A) of the Act does not explicitly identify brother-in-law as a member of a family, section 771(33)(A) of the Act does not limit the definition of family to the members listed in section 771(33)(A) of the Act and "family members not listed in section (A) can still be considered 'family' under the statute."⁴⁶ We find it reasonable to interpret section 771(33)(A) of the Act to include a spouse within a family as a member of a family. Two or more persons directly or indirectly controlling, controlled by, or under common control with any person are affiliates under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3). Further, 19 CFR 351.102(b)(3) states that in considering whether there is control, Commerce will consider family groupings.

Therefore, we preliminarily find that Dongkuk's Chairman, Sae Joo Chang, Vice Chairman, Sae Wook Chang, their sister, and brother-in-law are affiliated under section 771(33)(A) of the Act and 19 CFR 351.102(b)(3) as members of the Chang family grouping. We also preliminarily find that Dongkuk and this company are affiliated under section 771(33)(F) of the Act and 19 CFR 351.102(b)(3) because Dongkuk and this company are under common control of the Chang

August 8, 2018, at 1-2 and Exhibit SA-9.

⁴² See *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1325-26 (CIT 1999), and *Dongkuk Steel Mill Co. v. United States*, 29 CIT 724 (June 22, 2005).

⁴³ See, e.g., *2016-17 Prelim* and accompanying Preliminary Decision Memorandum at 12, unchanged in *2016-17 Final*.

⁴⁴ See Dongkuk Affiliation Memo for more details which contain Dongkuk's business-proprietary information.

⁴⁵ *Id.* See also Dongkuk's Section A Response dated June 12, 2018, at 11 and Exhibits A-10, A-11, A-13, and Attachment A-1, and Dongkuk's Supplemental Response dated August 8, 2018, at 1-2, and Exhibit SA-9.

⁴⁶ See *Ferro Union, Inc.*, 44 F. Supp. 2d at 1325-26.

family grouping.⁴⁷ Accordingly, we preliminarily treated Dongkuk's home market sales to this company as sales to an affiliated party and performed the arm's-length test for these sales.

4. Affiliated Party Transactions and Arm's-Length Test

We may calculate NV based on a sale to an affiliated party only if we are satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.⁴⁸ To test whether the respondents' comparison market sales were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's-length prices.⁴⁹ We included in our calculations of NV those sales to affiliated parties that were made at arm's-length prices and excluded those sales that failed the arm's-length test.

5. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, Commerce requested cost information from Dongkuk and Hyundai Steel and they submitted timely responses.⁵⁰ We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted for either Dongkuk or Hyundai Steel, and, therefore, we applied our standard methodology of using annual costs based on the reported data.⁵¹

a. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. Except as stated below, we relied on the COP data submitted by Dongkuk and Hyundai Steel in their questionnaire responses for the COP calculation.

During the POR, Dongkuk purchased slabs from its affiliates. Slab is a major input to the merchandise. Therefore, we analyzed Dongkuk's affiliated transactions in accordance with section 773(f)(3) of the Act, and adjusted Dongkuk's cost of manufacturing to reflect the higher of the COP, market price, or transfer price.⁵²

⁴⁷ See the Dongkuk Affiliation Memo for more details which contain Dongkuk's business-proprietary information.

⁴⁸ See 19 CFR 351.403(c).

⁴⁹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

⁵⁰ See Dongkuk's Section D Response dated June 12, 2018, and Hyundai Steel BCDQR.

⁵¹ See Hyundai Steel Preliminary Analysis Memorandum and Dongkuk Preliminary Analysis Memorandum.

⁵² See Dongkuk Preliminary Analysis Memorandum and 19 CFR 351.407(b).

b. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because: (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

Our cost tests indicated that, for both Dongkuk and Hyundai Steel, more than 20 percent of sales of certain home market products were made at prices below the COP within an extended period of time and were made at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis for each respondent and used the remaining above-cost sales to determine NV.

6. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP for the respondents, we based NV on home market prices. We calculated NV based on prices to unaffiliated customers in Korea and prices to affiliated customers which were determined to be at arm's length.⁵³ We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act.

We found at verification that Hyundai Steel did not include all short-term borrowings in its calculation of its short-term Korean Won (KRW) and U.S. dollar (USD) borrowing rates.⁵⁴ Because of the proprietary nature of Hyundai Steel's reporting, the details of this finding are explained in the Hyundai Steel Verification Report. We preliminarily determine that Hyundai Steel should have included all such short-term borrowings in its calculation of its KRW and USD borrowing rates.

⁵³ See the "Affiliated Party Transactions and Arm's-Length Test" section above.

⁵⁴ See Hyundai Steel Verification Report at 2 and 12-14.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, Commerce is not required to determine, or make any adjustments to, a dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.⁵⁵ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the antidumping duty investigation, a previous administrative review, or other information placed on the record.⁵⁶

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁵⁷ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁵⁸

Finally, under section 776(d) of the Act, when applying an adverse inference, Commerce may use any dumping margin from any segment of the proceeding under the order.⁵⁹ The Act also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁶⁰

⁵⁵ See section 776(b)(1)(B) of the Act.

⁵⁶ See also 19 CFR 351.308(c).

⁵⁷ See also 19 CFR 351.308(d).

⁵⁸ See SAA at 870 (1994).

⁵⁹ See section 776(d)(1) of the Act.

⁶⁰ See section 776(d)(3) of the Act.

As discussed below, we find the application of AFA is warranted with respect to Hyundai Steel's failure to report all its short-term borrowings in its calculation of the short-term Korean Won (KRW) and U.S. dollar (USD) borrowing rates.

In this review, our questionnaire requested that Hyundai Steel report credit expenses and inventory carrying costs "at the actual cost of short-term debt incurred by your company."⁶¹ Because Hyundai Steel did not include all of its borrowings in its calculation, we preliminarily determine that necessary information is not on the record and that Hyundai Steel withheld requested information, failed to timely provide information, and provided information that cannot be verified. Therefore, we preliminarily determine that selecting from facts otherwise available on the record with respect to such costs is warranted in determining Hyundai Steel's short-term borrowing credit expenses and inventory carrying costs, pursuant to sections 776(a)(1) and 776(a)(2)(A), (B), and (D) of the Act.

Moreover, because Hyundai Steel had the information available to it but did not provide it nor did it inform us when it responded that it did not include all of its short-term borrowings in its calculation (thus preventing us from being aware of the deficiency until we discovered it at verification), we preliminarily determine that Hyundai Steel did not act to the best of its ability in responding to our requests for information, and therefore further preliminarily determine that adverse inferences are warranted with respect to Hyundai Steel's reported imputed credit expenses and inventory carrying costs pursuant to section 776(b) of the Act.⁶²

As adverse facts available, we have made no adjustment for Hyundai Steel's home-market imputed credit expenses or inventory carrying costs. Moreover, we recalculated the reported imputed credit expenses for Hyundai Steel's EP sales and inventory carrying costs incurred in the country of exportation for all of Hyundai Steel's U.S. sales using the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made for any individual Federal Reserve publication during the POR.⁶³

We made adjustments for differences in circumstances of sale (for U.S. imputed credit expenses and warranty expenses) in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410.

When comparing U.S. sale prices with a NV based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and the subject merchandise.⁶⁴

V. CURRENCY CONVERSION

⁶¹ See questionnaire sent to Hyundai Steel dated April 16, 2018, at B-26, B-30, C-29, and C-33.

⁶² See also *POSCO v. United States*, 269 F.Supp.3d 1320 (CIT 2018) (affirming Commerce's determination to apply AFA where a respondent withheld information and Commerce did not make the discovery until verification).

⁶³ See Hyundai Steel Preliminary Analysis Memorandum.

⁶⁴ See 19 CFR 351.411(b).

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

12/14/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance